

ORIGINAL

OPEN MEETING ITEM



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COMMISSIONERS  
KRISTIN K. MAYES – Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP



RECEIVED  
Interim Executive Director

ARIZONA CORPORATION COMMISSION

2009 APR 21 A 8:05

DATE: APRIL 21, 2009  
DOCKET NO: W-03718A-09-0122  
TO ALL PARTIES:

AZ CORP COMMISSION  
DOCKET CONTROL

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Order on:

SAHUARITA WATER COMPANY, LLC  
(FINANCING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

APRIL 23, 2009

Company has waived the 10 days for filing of exceptions

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

APRIL 28, 2009 and APRIL 29, 2009

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission  
DOCKETED

APR 21 2009

DOCKETED BY	
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MICHAEL P. KEARNS  
INTERIM EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

[www.azcc.gov](http://www.azcc.gov)

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail [SABernal@azcc.gov](mailto:SABernal@azcc.gov)

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman  
4 GARY PIERCE  
5 PAUL NEWMAN  
6 SANDRA D. KENNEDY  
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION OF  
9 SAHUARITA WATER COMPANY, LLC FOR  
10 AUTHORITY TO INCUR LONG-TERM  
11 INDEBTEDNESS TO FINANCE WATER  
12 SYSTEM IMPROVEMENTS.

DOCKET NO. W-03718A-09-0122

DECISION NO. \_\_\_\_\_

**ORDER**

13 Open Meeting  
14 April 28 and 29, 2009  
15 Phoenix, Arizona

16 **BY THE COMMISSION:**

17 Having considered the entire record herein and being fully advised in the premises, the  
18 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

19 \* \* \* \* \*

20 **FINDINGS OF FACT**

21 1. On March 16, 2009, Sahuarita Water Company LLC ("SWC" or "Company") filed an  
22 application with the Commission for authorization to execute a loan agreement with the Water  
23 Infrastructure Finance Authority of Arizona ("WIFA").<sup>1</sup>

24 2. SWC is a for-profit Class "B" Arizona public service corporation located in Sahuarita,  
25 Arizona, and provides public water utility service to approximately 4,622 customers in Pima County,  
26 Arizona.

27 3. On April 3, 2009, the Company filed an affidavit of publication verifying that it had  
28 notice of its application published in the *Arizona Daily Star* on March 29, 2009. The *Arizona Daily*  
*Star* is a daily newspaper of general circulation in Pima County, Arizona.

4. On April 10, 2009, the Commission's Utilities Division ("Staff") issued a Staff Report

<sup>1</sup> This application was filed to take advantage of "stimulus" funds being administered by WIFA, and replaces SWC's earlier financing request made on February 17, 2009, in Docket No. W-03718A-09-0065.

1 that recommends approval of the finance authority.

2 5. On April 15, 2009, Staff filed an Addendum to its Staff Report, correcting a table in  
3 the Engineering Report.

4 6. On April 16, 2009, the Company filed Comments on the April 10, 2009 Staff Report,  
5 and supports Staff's recommendations. The Company requested that the Commission consider this  
6 matter at the earliest possible date.

7 7. On April 17, 2009, the Company filed a waiver of the ten days for filing of exceptions,  
8 and Staff filed its response indicating it has no objection to the waiver.

9 8. On February 17, 2009, the American Recovery and Reinvestment Act ("ARRA") of  
10 2009 went into effect. WIFA's *Supplemental 2009 ARRA Intended Use Plan* shows that the ARRA  
11 authorizes WIFA to provide an additional subsidy on loans, which can include forgivable principal  
12 and/or additional interest rate subsidies. In addition, the *Supplemental 2009 ARRA Intended Use*  
13 *Plan* provides that projects that receive ARRA funds will need to be capable of moving forward  
14 rapidly, hence, expedited regulatory consideration is appropriate.

15 9. The Company requested the WIFA loan to finance a 2,000 gallon per minute ("gpm")  
16 centralized arsenic treatment facility and related plant.

17 10. In 2007, the Company's two existing production wells were tested and determined to  
18 be in compliance with the United States Environmental Protection Agency ("EPA") requirement for  
19 an arsenic maximum contaminant level ("MCL") no greater than 10 parts per billion ("ppb"). At that  
20 time, one of the wells was barely in compliance, testing at 9.9 ppb for arsenic. Testing of the two  
21 wells in 2008 found them to exceed the 10 ppb limit. In addition, during 2007, the Company initiated  
22 a well exploratory program which was designed to enhance the Company's water production  
23 capability and quality. The results of that effort indicated that the water produced from each of the  
24 five exploratory wells would require arsenic treatment.

25 11. Under the Safe Drinking Water Act ("SDWA") Reduced Monitoring Cycle program,  
26 the next arsenic concentration sample test year for SWC will be 2010. Given the background of its  
27 existing production wells and the presence of elevated arsenic levels within its anticipated future  
28 sources of water supply, the Company concluded that it should implement arsenic treatment at this

1 time in order to ensure the Company is in compliance with the SDWA and the EPA arsenic  
2 concentration regulations at all times.

3 12. The Company operates a water system that consists of two drinking water wells  
4 having a combined capacity of 3,450 gpm, and three storage tanks, with a combined storage capacity  
5 of 2,550,000 gallons.

6 13. Staff believes that the Company has adequate capacity to serve its existing customer  
7 base plus reasonable growth.

8 14. The Company plans to construct a 2,000 gpm arsenic treatment plant and connect it to  
9 its existing plant with approximately 2.5 miles of collection transmission mains.

10 15. A general description of the plant and expected costs is as follows:

<u>Project Description</u>	<u>Estimated Cost (\$)</u>
<b><u>Arsenic Treatment Plant</u></b>	
Bid Total Labor	654,756
One 2,000 GPM arsenic treatment plant (four 10 ft diameter vessels manufactured by Layne)	1,505,910
Transformer	30,000
Earth work/site design	397,500
Fiber optics (design/production)	16,667
Engineering (construction inspections)	19,013
Labor	10,000
<b>Subtotal (Arsenic Treatment Facility)</b>	<b>2,633,846</b>
Contingency	52,677
<b>Total (Arsenic Treatment Facility)</b>	<b>2,686,523</b>

25 **Transmission Mains**

<b><u>Well #18 Mains</u></b>	
Includes 24" DIP (349') @ \$123/ft; 12" PVC (1,050') @ \$80/ft; 24" PVC (4,005') @ \$110/ft; 1" air relief valve @ \$2,000/unit; 4" air relief valve @ \$4,000/unit	1,018,000

1	Contingency	204,000
2	<b>Subtotal (Well #18 Mains)</b>	<b>1,222,000</b>
3		
4	<u>Well #14 Mains</u>	
5	Includes 16" PVC (867') @\$100/ft; 24" PVC (2,513') @ \$110/ft; 4" air relief valve @ \$4,000/unit	655,000
6	Contingency	131,000
7	<b>Subtotal (Well #14 Mains)</b>	<b><u>786,000</u></b>
8		
9	<b>Total Arsenic Treatment Facility &amp; Mains</b>	<b>4,694,523</b>

10

11 16. The Company anticipates beginning construction of the transmission mains in May  
 12 2009 and beginning construction of the arsenic treatment plant in June 2009. The Company expects  
 13 all construction work to be completed by December 2009.

14 17. WIFA has advised the Company that the centralized arsenic treatment facility will  
 15 qualify for funding under the ARRA.

16 18. The Commission's Engineering Staff reviewed the Company's proposed capital  
 17 improvements and found the project costs to be appropriate and the related cost estimates to be  
 18 reasonable. Staff states, however, that it was making no "used and useful" determination of the  
 19 proposed improvements, nor any conclusions for rate base or ratemaking purposes.

20 19. In an Arizona Department of Environmental Quality ("ADEQ") compliance status  
 21 report, dated May 30, 2008, ADEQ determined that SWC was in full compliance with ADEQ  
 22 requirements and is delivering water that meets the water quality standards required by Arizona  
 23 Administrative Code, Title 18, Chapter 4.

24 20. SWC is located in the Pima Active Management Area ("AMA"). In a compliance  
 25 status reported dated June 23, 2008, the Arizona Department of Water Resources ("ADWR")  
 26 determined that the Company was in compliance with ADWR requirements governing water  
 27 providers and/or community water systems.

28 21. Staff reports there are no delinquent compliance issues with this Company.

1        22.     SWC request that the Commission authorize it to secure WIFA financing in an amount  
2 not to exceed \$4,694,523. Due to an anticipated \$1,880,000 of forgivable principal pursuant to  
3 WIFA's authority under its *Supplemental 2009 ARRA Intended Use Plan*, the Company expected  
4 repayable indebtedness of \$2,820,000, with an anticipated 20 year amortizing loan and an interest  
5 rate of 4.46 percent per annum.<sup>2</sup>

6        23.     At December 31, 2008, the Company's capital structure consisted of 100 percent  
7 equity. Including Advances-In-Aid-Of-Construction ("AIAC") and Net Contributions-In-Aid-Of-  
8 Construction ("CIAC"), SWC's capital structure consisted of 0.0 percent debt, 52.6 percent equity,  
9 38.4 percent AIAC and 9.0 percent CIAC.

10       24.     Staff calculated a pro forma capital structure reflecting issuance of a \$2,820,000,  
11 twenty-year amortizing loan, at an interest rate of 5.0 percent per annum, and determined that based  
12 on December 31, 2008 financial results, SWC's capital structure would be comprised of 0.5 percent  
13 short-term debt, 17.5 percent long-term debt and 81.0 percent equity.

14       25.     Staff's financial analysis shows that based on December 31, 2008 operating results,  
15 issuance of the WIFA loan in the amount of \$2,820,000 at an interest rate of 5.0 percent per year,  
16 would result in a Times Interest Earned Ratio ("TIER") of 2.90 and a Debt Service Coverage  
17 ("DSC") ratio of 4.04.<sup>3</sup>

18       26.     Arizona Administrative Code ("A.A.C.") R18-15-104 requires WIFA borrowers to  
19 pledge their revenue sources to repay the financial assistance. A.R.S. § 40-285 requires public  
20 service corporations to obtain Commission authorization to encumber certain utility assets. Staff  
21 states that the statute serves to protect captive customers from a utility's act to dispose of any of its

22       <sup>2</sup> According to Staff, the current base interest rate on a WIFA loan is 5.25 percent, and is calculated by using the current  
23 prime rate of 3.25 percent plus 2.00 percent. The interest rate for each debtor is determined by multiplying the base  
24 interest rate by a subsidy rate set by WIFA for each individual entity. Multiplying the 0.85 subsidy rate of SWC by the  
5.25 base interest rate yields an interest rate of 4.46 percent.

25       <sup>3</sup> TIER represents the number of times earnings cover interest expense on short-term and long-term debt. A TIER greater  
26 than 1.0 means that operating income is greater than interest expense. A TIER less than 1.0 is not sustainable in the long  
27 term but does not mean that debt obligations cannot be met in the short term. DSC represents the number of times  
28 internally generated cash will cover required principal and interest payments on short-term and long-term debt. A DSC  
greater than 1.0 indicates that operating cash flow is sufficient to cover debt obligations. A DSC less than 1.0 means that  
debt service obligations cannot be met by cash generated from operations and that another source of funds is needed to  
avoid default.

1 assets that are necessary for the provision of service, and thus, it serves to preempt any service  
2 impairment due to disposal of assets essential for providing service. Staff states further that pledging  
3 assets as security typically provides benefits to the borrower in the way of increased access to capital  
4 funds or preferable interest rates, and it is often an unavoidable condition of procuring funds for small  
5 or financially stressed entities.

6 27. Staff concludes that issuance of the proposed debt financing for the purposes stated in  
7 the application is within the Company's corporate powers, is compatible with the public interest, is  
8 consistent with sound financial practices and will not impair its ability to provide service. Staff  
9 recommends authorizing SWC to incur debt in an amount not to exceed \$2,820,000 (\$4.7 million less  
10 \$1.88 million forgivable principal) for a period of 19-to-22 years, and at a rate not to exceed that  
11 available from WIFA.

12 28. Staff further recommends that the Company:

- 13 a. be authorized to engage in any transactions and to execute any documents necessary to  
14 effectuate the authorizations granted here;  
15 b. be authorized to pledge its assets in the state of Arizona pursuant to A.R.S. § 40-285  
16 and A.A.C. R18-15-104 in connection with the WIFA loan;  
17 c. file with Docket Control, as a compliance item in this matter, a copy of the loan  
18 documentation within 60 days of the execution of any financing transaction authorized  
19 herein; and  
20 d. file with Docket Control as a compliance item in this docket by December 31, 2010,  
21 copies of the Certificates of Approval of Construction ("AOC") issued by ADEQ for  
22 the arsenic treatment plant and transmission mains.

23 29. Staff's pro forma analysis indicates that SWC has the capacity to support the requested  
24 borrowing based on its 2008 operating results.

25 30. Staff recommendations are reasonable.

26 31. On April 17, 2009, in order to have this request considered at the Commission's  
27 regularly scheduled Open Meeting in April 2009, the Company filed a waiver of the full ten days  
28 allowed for exceptions pursuant to A.A.C. R14-3-110(B). Staff does not oppose having this matter

1 considered on the April 28, 2009 Open Meeting agenda.

2 **CONCLUSIONS OF LAW**

3 1. SWC is a public service corporation within the meaning of Article XV of the Arizona  
4 Constitution and A.R.S. §§ 40-301, 40-302, and 40-303.

5 2. The Commission has jurisdiction over SWC and of the subject matter of the  
6 application.

7 3. Notice of the application was given in accordance with the law.

8 4. The financing as approved herein is for lawful purposes within SWC's corporate  
9 powers, is compatible with the public interest, with sound financial practices, and with the proper  
10 performance by SWC of service as a public service corporation, and will not impair SWCs ability to  
11 perform the service.

12 5. The financing approved herein is for the purposes stated in the application, is  
13 reasonably necessary for those purposes and such purposes may not be reasonably chargeable to  
14 operating expenses or to income.

15 **ORDER**

16 IT IS THEREFORE ORDERED that Sahuarita Water Company LLC is hereby authorized to  
17 incur long-term indebtedness in an amount up to \$4,694,523 pursuant to a loan arrangement with  
18 WIFA, under which \$1,880,000 of the principal amount is forgivable principal, for a total principal  
19 amount to be repaid of \$2,814,523, at an interest rate not to exceed the current WIFA subsidized rate  
20 at the time the loan is executed, for the purpose of funding an arsenic treatment plant and related  
21 facilities as described in the application.

22 IT IS FURTHER ORDERED that the finance authority granted herein shall be expressly  
23 contingent upon Sahuarita Water Company LLC's use of the proceeds for the purposes stated in its  
24 application and approved herein.

25 IT IS FURTHER ORDERED that Sahuarita Water Company LLC is authorized to pledge its  
26 assets in the state of Arizona pursuant to A.R.S. § 40-285 and A.A.C. R18-15-104 in connection with  
27 the loan approved herein.

28 IT IS FURTHER ORDERED that Sahuarita Water Company LLC is authorized to execute



any documents necessary to effectuate the authorizations granted.

IT IS FURTHER ORDERED that Sahuarita Water Company LLC shall file with Docket Control, as a compliance item in this docket, copies of any executed financing documents related to this authority within 60 days after the date of execution.

IT IS FURTHER ORDERED that Sahuarita Water Company LLC shall file with Docket Control, as a compliance item in this docket, by December 31, 2010, copies of the Certificates of Approval of Construction issued by ADEQ for the arsenic treatment plant and transmission mains.

IT IS FURTHER ORDERED that approval of the financing set forth hereinabove does not constitute or imply approval or disapproval by the Commission of any particular expenditure of the proceeds derived thereby for purposes of establishing just and reasonable rates.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, MICHAEL P. KERNS, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

MICHAEL P. KERNS  
INTERIM EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

JR:

1 SERVICE LIST FOR: SAHUARITA WATER COMPANY, LLC.

2 DOCKET NO.: W-03718A-09-0122

3 Lawrence V. Robertson  
4 PO Box 1448  
5 Tubac, Arizona 85646  
6 Attorney for Sahuarita Water Company, LLC

7 Janice Alward, Chief Counsel  
8 Legal Division  
9 ARIZONA CORPORATION COMMISSION  
10 1200 West Washington Street  
11 Phoenix, Arizona 85007

12 Ernest Johnson, Director  
13 Utilities Division  
14 ARIZONA CORPORATION COMMISSION  
15 1200 West Washington Street  
16 Phoenix, Arizona 85007  
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18  
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